wording does include every ingredient for an offence under sections 116 and 161 of the Penal Code except the ingredient that the offence of receiving the bribe was not in fact committed.

Now on a consideration of the relevant sections of the Code I do not think that that is a necessary ingredient of any offence. It is merely a circumstance affecting the maximum quantum of punishment. Abetment of an offence is defined in section 108 and the succeeding sections to my mind only deal with the question of punishment for abetment in various circumstances. For example, section 109 deals with the case where the offence abetted is committed in consequence of the abetment, whereas section 116 deals with the case where the offence abetted is not committed in consequence of the abetment. But whether the case falls within section 109 or section 116 the abetment is still an offence and it is only the question of the maximum punishment that is affected in any way by the distinction between section 109 and section 116.

That being so I am compelled to agree with the contention of Che Abdul Aziz that the matter is to be considered in the light of sections 256 and 422 of the Criminal Procedure Code. And considering it in the light of these sections I can see no ground whatever for thinking that the Accused was in any way misled or that there has been any miscarriage of justice. He knew all along what was alleged against him, that he had offered $10 to a police corporal to release him, and his defence was that he did not offer $10 to the police corporal, that it was all a misunderstanding. How then he can claim to have been misled in any way by an inartistically worded charge which has afforded and, quite properly, scope for a great deal of criticism from counsel this morning but the defects of which could hardly have been apparent to him, I wholly fail to see. I am to some extent fortified in that view by the fact that at the trial he was represented by experienced counsel and I have no doubt that if counsel had felt in the slightest way embarrassed by the wording of the charge he would have made some point of it in the course of the trial. For these reasons I think the first ground of appeal must fail.

As regards the second ground it is this. There was put in evidence against the Accused at the trial a statement which it is alleged he made to the Police under section 13 of the Prevention of Corruption Ordinance. In case the matter should go any further, I have no hesitation in expressing my opinion that the learned President was clearly influenced by that statement in convicting him. Here it is said that it was not proved, as of course it had to be proved, that the caution provided for by section 13(4) (a) (ii) was administered. If it was not administered then, of course, the statement should not have been admitted. As is always the case I have not the benefit of a verbatim note of what happened at the trial. I have to decide the matter on the material before me which is the President's note. I agree that note is not as clear as it might be but I have come to the conclusion that it does shew that the caution typed at the head of the statement which was actually produced was in fact administered. Again I am fortified in that conclusion by the conduct of the defence. At that stage of the trial, that is at the stage when the statement was tendered, counsel was present on behalf of the Accused and he raised no question of admissibility. To my mind that goes to shew that counsel who after all listened to the evidence when it was given placed the same construction upon it as I have placed upon the President's note.

The appeal will be dismissed.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons.*

YEOH TAT BENG v. LEONG CHIEW

[O. C. J. (Good J.) February 11, 1957]

[Ipoh — Civil Suit No. 2 of 1957]

Partnership — Appointment of an interim receiver and manager of the partnership business — Principles on which a receiver will be appointed.

By an agreement in writing made on May 20, 1955, the plaintiff and the defendant agreed to enter into partnership under the name and style of Mun Fook Mining Kongsi to mine for tin ore and other minerals on a piece of mining land close to Taiping. Clause 6 of the agreement provided that the partnership should be managed by the defendant and that the treasurer should be the plaintiff. Clause 8 of the agreement declared "The Bankers of the partnership shall be the Chartered Bank at Taiping . . . . and all moneys and securities for moneys of the partnership . . . . shall be kept deposited and operated with the said Bankers by Yeoh Tat Beng." By the terms of a permit to mine given on February 8, 1956 by Tekka-Taiping Ltd. to the defendant, the defendant was permitted to mine for tin ore for a period of one year upon a piece of mining land in the Mukim of Assam Kumbang. The permit, a renewal of an earlier permit, although standing in the name of the defendant, was a partnership asset. On April 7, 1956 the defendant received a cheque drawn in his favour for the sum of $4,076.32 being the proceeds of sale of tin ore won by the partnership from the land held under the permit to mine. The defendant in breach of clause 8 of the agreement paid this cheque into his own private and personal banking account. On December 21 and 28, 1956, January 7 and 17, 1957 the defendant received further cheques being proceeds of sale of tin ore won by the partnership from the land held under the permit to mine, and in each case in breach of clause 8 paid these cheques into his own private and personal banking account.

For the reasons stated in his judgment the learned Judge considered that these grounds were sufficient to justify the appointment of an interim receiver and manager subject to the conditions set out at the end of his judgment.

APPLICATION for the appointment of an interim receiver and manager.

W. J. Huntsman for the plaintiff-applicant.

A. S. Yeo for the defendant-respondent.

Good J. : —On 20th May, 1955, the applicant and the respondent entered into a partnership agreement to mine a piece of land in the Mukim of Assam Kumbang under a permit from the lessees of the mining lease.

On 2nd January, 1957, the applicant instituted proceedings in this Court for the dissolution of the partnership and the winding up of the partnership business.

The applicant now moves for the appointment of an interim receiver and manager of the partnership business.

In his plaint in the civil suit the applicant alleges gross misconduct on the part of the respondent in the affairs of the partnership. *Inter alia,* he pleads instances of gross misconduct on the part of the respondent in matters connected with the disposal of partnership money. Gross misconduct by a partner is a ground of dissolution, as provided in section 207 of the Contracts (Malay States) Ordinance, 1950, and this question will arise (indeed it will be the main issue) on the hearing of the suit. The learned author of *Kerr* on Receivers, 11th Edition, page 74, says: "The Court does not ..... appoint a receiver unless it is reasonably clear that a dissolution will be ordered at the trial". To that extent, therefore, I am obliged to consider the question of gross misconduct in the present proceedings.

The principles on which a receiver will be appointed over partnership property are fully set out in *Lindley* on Partnership, 11th Edition, pages 644 — 657. The first principle to which it is necessary to refer is stated thus: "... if it (the partnership) is still subsisting no receiver will be appointed unless some special grounds for the appointment can be shown, or unless it is plain that an order for dissolution will be made." Under the heading "Misconduct" the learned author goes on to say:—

> "If the partnership is not yet dissolved, there must be something more than a partnership squabble; the due winding up of the affairs of the concern must be endangered to induce the Court to appoint a receiver of its assets."

It is not incumbent upon me in the present proceedings to decide whether there has been gross misconduct on the part of the respondent. I have only to decide whether it is "reasonably clear" that the trial will have that result, and whether there are reasonable grounds for apprehending that partnership assets may be lost pending the outcome of the trial.

In my view the failure of the respondent to pay into the partnership account the monies received by him from the sale of tin belonging to the partnership is enough to arouse grave suspicion as to his *bona fides;* and his explanation is specious and untenable. The cheques for tin sold from time to time to the Straits Trading Co. Ltd., were made out in favour of the respondent because the permit to the mine is in his name. Clause 8 of the agreement provides that partnership monies shall be deposited with the Chartered Bank at Taiping by the applicant; but while it may be true that the applicant was not readily available to take over the cheques and lodge them when received, that is no justification for the respondent's paying them into his own private account. The position is that during the last ten months a total of more than $13,000 has been paid to the respondent for the account of partnership but none of it was paid into the partnership account. There is no evidence to suggest that the respondent could not himself have paid this money into the partnership account.

It is not beyond the bounds of possibility that when the partnership accounts are taken the respondent will be unable to show that this money, or all of this money, was properly expended on partnership affairs. If he is allowed to continue paying partnership moneys into his own account there seems to me to be a real danger of partnership assets being lost, and the Court would be failing in its duty if it did not take steps to safeguard the partnership assets.

I accordingly make an order in terms of the motion, but as I consider that the partnership assets will be adequately safeguarded by steps short of the appointment of a receiver and manager if the respondent is willing to co-operate, I further direct that my order shall be stayed upon the following conditions:—

(1) that the respondent within one week pay into the partnership account with the Chartered Bank of India, Australia and China, Taiping, the amount of all cheques already paid to him for the partnership account;

(2) that the respondent pays into the said partnership account all future cheques so received; and

(3) that the respondent within two weeks furnishes a detailed account of all expenditure incurred by him in the name or on behalf of the partnership as alleged in paragraph 11 of his affidavit sworn on the 16th day of January, 1957.

Both parties to be at liberty to apply.

The applicant is awarded his costs of this application.

Order accordingly.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; A. S. Yeo.*